

# American Medical Association

Physicians dedicated to the health of America



JUL 25 2001

July 24, 2001

The Honorable John D. Dingell  
U.S. House of Representatives  
2328 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Dingell:

On behalf of the nearly 300,000 physician and student members of the American Medical Association (AMA), we strongly urge you to support the Ganske/Dingell/Norwood/Berry *Bipartisan Patient Protection Act* introduced on July 19, 2001. The U. S. House of Representatives overwhelmingly passed an earlier version of this legislation on a bipartisan basis on October 7, 1999, by a vote of 275 to 151.

Last month, the Senate passed, on a bipartisan basis, meaningful patients' rights legislation. Through open debate and the adoption of bipartisan amendments, the Senate bill addressed critics' concerns by requiring additional protections for employers, deference to state patients' rights laws, no coverage of excluded benefits, and the exhaustion of administrative remedies prior to going to court.

We anticipate that the House will consider an alternative patients' rights bill introduced by a group of members led by Representative Ernie Fletcher (R-KY). The AMA has several concerns about this legislation, namely:

- **The bill would remove rights that patients currently have, including rights to hold health plans accountable.** Ten states have enacted laws to allow patients to hold health plans accountable for negligent medical decisions. The Fletcher bill would nullify these laws. In addition, the Fletcher bill would reverse case law in three Federal Circuit Courts of Appeal that enable patients to hold health plans accountable.
- **The Fletcher bill is a retreat on patient protections.** Unlike legislation passed in previous years, the bill fails to guarantee basic patient protections, including, access to pediatric specialists, unequivocal access for women to gynecologists, and protection of standing referrals.
- **The legal remedies in the Fletcher bill contain several loopholes for health plans to avoid accountability.** Health plans could avoid liability by alleging that they did not receive *sufficient medical information* from the patient or treating physician about the patient's condition.

- **The Fletcher bill would increase liability risk for physicians.** Physicians could be held liable both under current state laws AND under the proposed federal cause of action. The bill does NOT protect physicians from being *deemed* designated decision-makers, so treating physicians could be held liable in federal court when plans require them to make prior authorization decisions and identify them as plan fiduciaries.
- **The external appeals process in the Fletcher bill is flawed.** Independent medical reviewers would be bound by arbitrary and narrow health plan definitions of medical necessity.
- **The Fletcher bill contains a severability clause that could wipe out the accountability section.** The entire accountability section would be nullified if any single provision of the appeals section is found unconstitutional.
- **The Fletcher bill grants quasi-judicial powers to the medical review panels,** thereby raising potential constitutional issues which, with the severability clause, could render the accountability provisions null and void.

As the House prepares for consideration of this important matter, we urge you to advocate for a fair rule that would guarantee full and open debate on this issue.

The time for passage of a strong, bipartisan patients' bill of rights is now. We ask that you not be lulled into voting for a weaker bill that retreats from the basic patient protections passed in recent years. Also, do not believe all the rhetoric—read the bill for yourself and you will understand that the Ganske/Dingell/Norwood/Berry bill is the only true patients' bill of rights.

For patients and the physicians who serve them, please vote to support the Ganske/Dingell/Norwood/Berry *Bipartisan Patient Protection Act*.

Sincerely,



Robert W. Gilmore, MD  
Deputy Executive Vice President

Attachments